

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

CUSTOMINK, LLC,

Plaintiff,

vs.

OOSHIRTS INC.,

Defendant.

Civil Action No. 1:12-cv-576-GBL-JFA

**FINAL JUDGMENT OF PERMANENT  
INJUNCTION UPON CONSENT**

Plaintiff CustomInk, LLC (“CustomInk”) and Defendant ooShirts Inc. (“ooShirts”) do hereby consent to entry of a Final Judgment Upon Consent and Permanent Injunction as follows:

On May 25, 2012, CustomInk filed a complaint against ooShirts, alleging copyright infringement with respect to proprietary graphic designs and web pages, as well as unfair competition and false advertising in violation of the Lanham Act and Virginia law.

On November 6, 2012, the Parties entered into a Settlement Agreement and Release (the “Settlement Agreement”). As a part of the Settlement Agreement, the Parties have agreed to entry of this Final Judgment of Permanent Injunction Upon Consent (the “Consent Judgment”). Each Party has waived the right to appeal from this Consent Judgment. Each Party will bear its own fees and costs in connection with this action. The Parties further agree that any violation of this Consent Judgment would cause irreparable harm and, if such a violation occurs, CustomInk will be entitled to immediate relief. The Court having reviewed the complaint and other pleadings, and having reviewed the Consent Judgment and finding good cause, orders as follows:

**IT IS HEREBY ORDERED AND ADJUDGED** by consent of the Parties that ooShirts, including its officers, agents, owners, employees, successors, confederates, and any person in

active concert or participation with ooShirts who receives notice of this Consent Judgment, shall be and is hereby permanently restrained and enjoined from (i) challenging the validity and enforceability of CustomInk's copyrights in the prior and current design and layout of the home page and design lab page of CustomInk's website (the "CustomInk Site") which are depicted in Exhibit A to the Settlement Agreement, including the home page and design lab page as registered in the following registrations with the U.S. Copyright Office: TX 7-349-609, TX 7-518-137, TX 7-450-855, TXu1-173-377, and TXu1-181-727; (ii) infringing copyright in any portion of the prior or current design or layout of the home page or design page lab of the CustomInk Site, or in any other copyrighted proprietary web page designs or layouts displayed on the CustomInk Site, including, but limited to, the designs and layouts depicted in Exhibit A to the Settlement Agreement; (iii) by no later than 120 days after the Effective Date of the Settlement (as defined therein), referring to its design application page as a "Design Lab" or otherwise using the terms "Design Lab" in connection with ooShirts' website (the "ooShirts Site") or ooShirts' business; (iv) except as permitted pursuant to a valid license with an appropriate intellectual property rights holder, displaying, making, offering to sell, selling or further advertising any copies of graphic designs or other CustomInk proprietary content shown in Exhibit C to the Settlement Agreement; and (v) publishing or distributing in any medium, or causing to be published or distributed in any medium, a review of ooShirts, of the ooShirts' Site, or of ooShirts' services, that is (A) prepared in whole or part by ooShirts or any agent or affiliate thereof, but does not meaningfully and prominently disclose the relationship between such person and ooShirts and (B) would cause a reasonable reader to believe that it was prepared by an ooShirts customer or an independent, unbiased reviewer. ooShirts is hereby given notice that it shall be deemed to have actual notice of the issuance and terms of this Consent Judgment and

that any act by it in violation of any of the terms thereof may be considered and prosecuted as contempt of this Court.

**IT IS FURTHER ORDERED AND ADJUDGED** in the event that ooShirts, except as permitted pursuant to a valid license with an appropriate intellectual property rights holder displays, makes, offers to sell, sells or further advertises any copies of graphic designs or other CustomInk copyrighted proprietary content shown in Exhibit C to the Settlement Agreement, or if ooShirts is determined to have infringed CustomInk's copyright or copyrights in any other graphic design or content that CustomInk has made available online for customer use, CustomInk may elect to receive as liquidated damages the sum of two thousand and five hundred dollars (\$2,500.00) for each graphic design copied. Provided that ooShirts forever ceases all use of such graphic design or other content (including by ceasing any actions or inaction that facilitate or enable the use of such graphic design or other content by its customers or others), within seven (7) days of CustomInk providing written notice to ooShirts that CustomInk contends that such use infringes CustomInk's copyright in such graphic design or other content, such liquidated damages payment shall be the sole available damages remedy for such copying. However, the limitation of the preceding sentence shall not prevent CustomInk from seeking or obtaining any other non-monetary relief with respect to such violation, including specific performance and/or further injunctive relief to enforce the Settlement Agreement or this Consent Judgment.

**IT IS FURTHER ORDERED AND ADJUDGED** that in any action or proceeding related to the enforcement of this Consent Judgment the prevailing party shall recover attorney's fees and costs.

**IT IS FURTHER ORDERED AND ADJUDGED** that, any action or proceeding to enforce this Consent Judgment shall be brought in the United States District Court for the

Eastern District of Virginia and the Court maintains continuing jurisdiction for such purposes. The Parties agree to waive any challenges to venue or personal jurisdiction with respect to any action or proceeding brought pursuant to this paragraph.

**IT IS FURTHER ORDERED AND ADJUDGED** that entry of this Consent Judgment shall conclude this action to the prejudice of any and all claims or cross-claims deemed merged and barred in accordance with the law.

The undersigned hereby stipulate to the above facts and conclusions and consent to the entry of this Consent Judgment, which may be signed in counterparts. Signatures can be obtained and exchanged by facsimile or electronic transmission.

**IT IS SO STIPULATED.**

DATED: November 21, 2012

Respectfully submitted,

ARNOLD & PORTER LLP

By: /s/ Douglas A. Winthrop  
Douglas A. Winthrop\*

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\*admitted pro hac vice

DATED: November 21, 2012

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By: /s/ Joseph C. Gratz  
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DATED: November 21, 2012

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**IT IS SO ORDERED.**

DATED: November 26, 2012

/s/  
Gerald Bruce Lee  
United States District Judge  
UNITED STATES DISTRICT JUDGE